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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **FOR THE COUNTY OF VENTURA**

17 KATRINA KELLER, individually and on
18 behalf of all others similarly situated,

19 PLAINTIFF,

20 v.

21 SELECT FUNDING LLC, a California
22 limited liability company; and DOES 1 to
23 100, inclusive,

24 DEFENDANT.

CASE NO:

56-2021-00550033-CU-OE-VTA

CLASS ACTION AND REPRESENTATIVE
ACTION COMPLAINT FOR:

- (1) FAILURE TO PAY TIMELY WAGES
(LABOR CODE § 204, 210);
(2) FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS (LABOR
CODE § 226);
(3) FAILURE TO PROVIDE TIMELY,
DUTY-FREE MEAL PERIODS AND/OR PAY
MEAL PERIOD PREMIUMS FOR MISSED
MEAL PERIODS (LABOR CODE §§ 226.7,
512; IWC WAGE ORDER 4-2001);
(4) FAILURE TO PROVIDE COMPLIANT
REST PERIODS AND/OR PAY REST
PERIOD PREMIUMS (LABOR CODE §
226.7; IWC WAGE ORDER 4-2001);
(5) FAILURE TO REIMBURSE BUSINESS
EXPENSES (LABOR CODE § 2802);
(6) UCL VIOLATIONS (BUS. & PROF. CODE
§§ 17200-17204); AND
(7) PAGA AND OTHER PENALTIES
(LABOR CODE §§ 2698 – 2699.5);

DEMAND FOR JURY TRIAL

VENTURA
SUPERIOR COURT
FILED

JAN 29 2021

MICHAEL D. PLANET
Executive Officer and Clerk

BY: _____, Deputy

MARIANA SUAZO

FILED

COPY

1 Plaintiff Katrina Keller, on behalf of herself, the State of California, other aggrieved
2 employees, and all others similarly situated (hereinafter “Class Members”) complain and allege as
3 follows:

4 OVERVIEW OF CLAIMS

5 1. Plaintiff bring this action on behalf of herself and all others similarly situated, as a
6 class action, and as a representative action pursuant to Labor Code § 2699, *et seq.*, and on behalf
7 of the California general public, against Defendant Select Funding LLC and DOES 1 to 100
8 (“Defendant”) for their (1) failure to provide timely wages; (2) failure to provide accurate, itemized
9 wage statements within the one year prior to the filing of this Complaint; (3) failure to provide
10 timely and duty-free meal periods and/or pay meal period premiums for missed meal periods; (4)
11 failure to provide compliant rest periods and/or pay rest period premiums; (5) failure to reimburse
12 employees for their expenses incurred in connection with work-related usage of their personal cell
13 phones and laptops); (6) UCL violations based on the foregoing; and (7) PAGA and other penalties
14 based on the foregoing. As a result of the foregoing, Defendant has violated California statutory
15 laws as described below.

16 2. The “Class Period” is designated as the period from four years prior to October 8,
17 2020 through the trial date¹. The “PAGA Period” is designated as the period from one year prior
18 to the sending of the PAGA letter to the LWDA (*i.e.*, one year prior to June 1, 2020) through the
19 present and on-going. Defendant’s violations of California’s wage and hour laws and unfair
20 competition laws, as described more fully below, have been ongoing throughout the Class Period.

21 VENUE

22 3. Venue is proper in this county under section 395.5 of the California Code of Civil
23 Procedure. Many, if not all, of the putative Class Members were employed and/or performed work
24 during the Class Period by Defendant in Ventura County. Many of the acts alleged herein including
25 Defendant’s failure to provide timely and duty-free meal periods and pay meal period premiums,
26 failure to provide compliant rest periods and pay rest period premiums, failure to provide accurate
27

28 ¹ The pleaded claims have been tolled since October 8, 2020.

1 itemized wage statements, and failure to reimburse business expenses occurred in Ventura County.
2 Venue is therefore proper in Ventura County.

3 **JURISDICTION**

4 4. Defendant is within the jurisdiction of this Court. Defendant transacts millions of
5 dollars of business by providing small businesses with working capital and equipment financing
6 throughout the State of California, including in the County of Ventura. Thus, Defendant has
7 obtained the benefits of the laws of the State of California. In addition, Plaintiff asserts no claims
8 arising under federal law. Rather, Plaintiff brings causes of action based solely on, and arising
9 from, California law. Defendant is a California resident corporation so there is no federal diversity
10 jurisdiction under CAFA or otherwise. The claims of the Class and the claims of the aggrieved
11 employees are also based solely on California law described herein. The total amount sought by
12 Plaintiff, including attorneys' fees, is less than \$5,000,000.

13 **THE PARTIES**

14 **A. The Plaintiff**

15 5. Plaintiff is a California resident and was an employee of Defendant in California
16 during the relevant time period. From at least four years from the filing of this complaint through
17 the present, and on-going, Defendant's employees, including Plaintiff during her employment,
18 did not receive all wages timely, were not provided accurate and/or complete wage statements,
19 were not provided timely and duty-free meal periods and/or provided meal period premiums, were
20 not provided compliant rest periods and/or provided rest period premiums, and were not
21 reimbursed for all expenses incurred in the discharge of their duties.

22 6. Plaintiff represents the state of California and a group of aggrieved employees
23 defined as:

24 All individuals who or were employed by Select Funding LLC in the State of California
25 during the PAGA Period (hereinafter referred to as "Aggrieved Employees").

26 7. By way of this action, Plaintiff also seeks to represent the following Class:

27 All individuals who or were employed by Select Funding LLC in the State of California
28 during the Class Period (hereinafter referred to as "Class Members" or the "Class").

1 **B. The Defendant**

2 8. Defendant Select Funding LLC is a California limited liability company
3 headquartered in Calabasas, California. Defendant provides small businesses with working capital
4 and equipment financing. To provides its financial services, Defendant employs employees, such
5 as the Plaintiff, the Class Members, and the Aggrieved Employees.

6 9. The true names and capacities, whether individual, corporate, associate, or
7 otherwise, of Defendants sued herein as DOES 1 to 100, inclusive, are currently unknown to
8 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
9 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
10 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
11 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
12 capacities of the Defendants designated hereinafter as DOES when such identities become known.

13 10. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
14 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
15 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
16 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
17 employer and/or joint employer of Plaintiff, the Class, and the Aggrieved Employees.

18 11. Defendant was and is the employer of Plaintiff, the Aggrieved Employees and Class
19 Members for all relevant time periods. During the Class Period, the total number of Class Members
20 is estimated to be over 100.

21 **FACTUAL ALLEGATIONS**

22 12. Defendant operates and, at all times during the PAGA Period and the Class Period,
23 has done and does business in California providing financial services to small businesses in
24 California. Defendant, in the course of operating its business in California during the Class Period
25 and the PAGA Period, employed Plaintiff and the Class Members.

26 13. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in
27 any employment are due and payable twice during each calendar month, on days designated in
28 advance by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these

1 requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly
2 payroll if the wages are paid not more than seven calendar days following the close of the payroll
3 period.

4 14. At all times relevant hereto, whenever Plaintiff and other employees paid on a
5 commission basis earned commissions, Defendant only paid them their commissions due once per
6 month, in violation of Labor Code section 204. *See Amaral v. Cintas Corp.* No. 2, 163 Cal.App.4th
7 1157, 1209 (2008); *see also Peabody v. Time Warner Cable*, 59 Cal. 4th 662 (2014) (commissions
8 must be paid twice every calendar month).

9 15. Labor Code § 210 provides that “in addition to, an entirely independent and apart
10 from, any other penalty provided in this article, every person who fails to pay the wages of each
11 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any
12 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
13 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
14 failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the
15 faulty compensation policies and practices described in detail above, Plaintiff, the Class, and the
16 other Aggrieved Employees are entitled to recover penalties under Labor Code § 210.

17 16. Labor Code § 226 obligates employers, semi-monthly or at the time of each
18 payment to furnish an itemized wage statement in writing showing:

- 19 (1) gross wages earned;
- 20 (2) total hours worked by the employee;
- 21 (3) the number of piece-rate units earned and any applicable piece rate if the employee
22 is paid on a piece rate;
- 23 (4) all deductions, provided that all deductions made on written orders of the employee
24 may be aggregated and shown as one item;
- 25 (5) net wages earned;
- 26 (6) the inclusive dates of the period for which the employee is paid;
- 27 (7) the name of the employee and only the last four digits of his or her social security
28 number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...; and,
- (9) all applicable hourly rates in effect during the pay period and the corresponding
number of hours worked at each hourly rate by the employee...

17. Here, Defendant failed to provide Plaintiff, the Class, and the Aggrieved
Employees with twice monthly wage statements that included all commissions due, thus violating

1 Labor Code § 226(a). Specifically, the wage statements issued by Defendant to Plaintiff, the Class,
2 and the other aggrieved employees did not and do not include the correct gross and net wages in
3 violation of Labor Code § 226(a), since they did not include all commissions earned on a twice
4 monthly basis.

5 18. Labor Code § 226(e) provides that an employee is entitled to recover \$50 for initial
6 pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period,
7 not to exceed \$4,000, as well as an award of costs and reasonable attorney's fees, for all pay periods
8 in which the employer fails to provide accurate itemized statements to the employee causing the
9 employee to suffer injury.

10 19. Class Members and Aggrieved Employees need not show "injury" or a "knowing
11 and intentional" as ordinarily required by Labor Code section 226(e) to establish a violation
12 sufficient to trigger PAGA penalties under Labor Code § 226(a). *See Lopez v. Friant & Associates,*
13 *LLC*, 15 Cal. App. 773, 788 (Cal. App. 2017) ("Consistent with the PAGA statutory framework
14 and the plain language and legislative history of section 226(e), we hold a plaintiff seeking civil
15 penalties under PAGA for a violation of section 226(a) does not have to satisfy the "injury" and
16 "knowing and intentional" requirements of section 226(e)(1)"); *Willner v. Manpower Inc.* 35 F.
17 Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, "all [plaintiff] needs
18 to establish is a violation of section 226(a), which she has done, as discussed above."); *McKenzie*
19 *v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that "for the purposes of
20 recovering PAGA penalties, one need only prove a violation of Section 226(a), and need not
21 establish a Section 226(e) injury."); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815,
22 at *28 (C.D. Cal. July 3, 2013) ("Plaintiffs do not need to establish a Cal. Lab. Code § 226(e)
23 injury to recover penalties under § 2699(f) of PAGA.").

24 20. Further and in addition to the penalties outlined above, Labor Code § 226.3
25 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a
26 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an
27 initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
28 citation, for which the employer fails to provide the employee a wage deduction statement or fails

1 to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendant
2 failed to provide Plaintiff, the Wage Statement Class Members, and the other Wage Statement
3 Aggrieved Employees with accurate itemized wage statements. Accordingly, Defendant is
4 additionally liable for Labor Code § 226.3 penalties for their violations of Labor Code § 226(a).
5 *See Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015
6 WL 1137151, at *7 [“the weight of authority counsels that violations of Section 226.3 may be the
7 basis of a PAGA claim.”]; *Pedroza v. PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL
8 9506073, at *6 (C.D. Cal. June 14, 2012) (“Lab. Code § 226.3 merely provides that failure to
9 perform actions mandated by § 226(a) may trigger civil penalties.”).²

10 21. Labor Code § 512 requires employers to provide employees with a thirty (30)
11 minute uninterrupted and duty-free meal period within the first five (5) hours of an employee’s
12 shift. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a
13 second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512,
14 an employer may not employ an employee for a work period of more than ten (10) hours, without
15 providing the employee with a second meal period of not less than thirty (30) minutes. The second
16 meal period may not be waived if the total hours worked is more than twelve (12) hours.

17 22. Under Labor Code § 512, if an employer maintains a uniform policy that does not
18 authorize and permit the amount of mealtime called for under the law (as specified in the applicable
19 Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the
20 context of rest breaks that employer liability attaches from adopting an unlawful policy:

21 An employer is required to authorize and permit the amount of rest break time called for
22 under the wage order for its industry. If it does not—if, for example, it adopts a uniform
23 policy authorizing and permitting only one rest break for employees working a seven-hour
shift when two are required—***it has violated the wage order and is liable.***

24 (*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

25 23. Following *Brinker*, the Courts of Appeal have confirmed that liability for meal
26 period violations arises when an employer adopts a uniform policy that fails to provide a duty-free

27 ² *Accord Singer v. Becton, Dickinson & Co., Med-Safe Sys.* (S.D. Cal. July 23, 2008) 2008 U.S. Dist. LEXIS 56326,
28 *18; *Yadira v. Fernandez* (N.D. Cal. June 14, 2011) 2011 U.S. Dist. LEXIS 62894, *7–9, 2011 WL 2434043; *Willis*
v. Xerox Bus. Servs., LLC (E.D. Cal. Nov. 15, 2013) No. 1:13-CV-01353-LJO, 2013 WL 6053831, at *7.

1 meal period as required by Labor Code section 512.³

2 24. Here, the Plaintiff and the other managers and team leads who are the Class and
3 aggrieved employees for this claim are not relieved of all duties during their meal periods several
4 times per week because they were required to remain on the premises for lunch. As a result, the
5 meal periods taken by Plaintiff. The Class, and the Aggrieved Employees are all on-duty.

6 25. “An on-duty meal period is permitted only when the nature of the work prevents an
7 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal
8 break.” *Lubin v. The Wackenhut Corp.* (2016) 5 Cal. App. 5th 926, 932.) The written agreement
9 must include a provision allowing the employee to revoke it at any time. *Id.* Here, neither Plaintiff,
10 the Class, nor the other aggrieved employees, were ever asked to sign an on-duty meal period
11 agreement. But even if Plaintiff, the Class, and the Aggrieved Employees had been asked to sign
12 on-duty meal period agreements, it is likely that such agreements would violate California law.
13 Generally, the DLSE and courts have “found that the nature of the work exception applies: ‘(1)
14 where the work has some particular external force that requires the employee to be on duty at all
15 times, and (2) where the employee is the sole employee of a particular employer.” *Id.* at p. 945;
16 *Abdullah v. U.S. Security Associates, Ifenc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the
17 employer’s obligation to determine whether the nature of the work prevents an employee from
18 being relieved *before* requiring an employee to take an on-duty meal period.” *Lubin*, 5 Cal. App.
19 5th at p. 946.) Nor may an employer “discharge its duty by arguing that its clients who requested
20 on-duty meal periods determined that the nature of the work prevented officers from being relieved
21 of all duty.” *Id.* at p. 947; *Benton*, 220 Cal. App. 4th at p. 729.)

22 26. Here, there is nothing in the job duties of Plaintiff, the Class, or the aggrieved
23 employees that would require them to remain on-duty and on premises while taking a meal period.
24 The California Supreme Court has made it clear that requiring an employee to remain on premises

25 ³ For example, in *Faulkinbury*, the Court applied *Brinker*: “In *Faulkinbury I*, we concluded that even if [defendant]’s
26 on-duty meal break policy was unlawful, [defendant] would be liable only when it actually failed to provide a required
27 off-duty meal break. *Brinker* leads us now to conclude [defendant] would be liable upon a determination that
28 [defendant]’s uniform on-duty meal break policy was unlawful.” *Faulkinbury*, 216 Cal.App.4th at p. 235.) The Court
went on: “the employer’s liability arises by adopting a uniform policy that violates the wage and hour laws. Whether
or not the employee was able to take the required break goes to damages” (*Ibid.* [citations omitted]; *see also*
Benton v. Telecom Network Specialists, Inc. (2013) 220 Cal. App. 4th 701, 728.)

1 is inconsistent with requiring duty-free breaks. *See Augustus v. ABM Security Services, Inc.*, 2016
2 D.J. 12608 (2016)⁴; see also *Frlekin v. Apple Inc.*, No. S243805, 2020 WL 727813 (Cal. Feb. 13,
3 2020).⁵ Here, Plaintiff and the other leads or managers were required to remain on premises several
4 times per week. This constitutes a failure to provide duty-free lunches and triggers meal period
5 premiums and PAGA penalties.

6 27. Labor Code § 226.7 provides “an employer shall not require an employee to work
7 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
8 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage
9 Order Nos. 7-2001 and 9-2001, an employer must authorize and permit all employees to take ten
10 (10) minute duty free rest periods for every major fraction of four hours worked. *See Augustus v.*
11 *ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that “during rest periods
12 employers must relieve employees of all duties and relinquish control over how employees spend
13 their time.”).

14 28. Pursuant to Labor Code § 226.7 and IWC Wage Order No. 4-2001, Defendant
15 failed to provide Plaintiff, the Class, and all Aggrieved Employees in management and team lead
16 positions with duty-free rest periods of not less than ten (10) minutes for every major fraction of
17 four (4) hours worked. Instead, Defendant regularly and consistently required Plaintiff, the Class,
18 and the other Aggrieved Employees to remain on the premises for rest breaks. This constitutes a
19 failure to provide duty-free rest periods and triggers rest period premiums and PAGA penalties.

20 29. Plaintiff, the Class, and the Aggrieved Employees do not fall under the professional
21 exemption stated in IWC Wage Order 4-2001. The Wage Order states that the Order does not apply
22 to all persons employed in professional occupations. To qualify for the exemption a professional
23 must earn a monthly salary equivalent to no less than two (2) times the state minimum wage for
24 full-time employment. Full time employment is defined in Labor Code § 515(c) as 40 hours per
25

26 ⁴ In *Augustus v. ABM*, the California Supreme Court declared that state law prohibits on-duty and on-call rest
27 periods. It stated that **employers must (1) relieve their employees of all duties during rest periods and (2)**
28 **relinquish any control over how employees spend their break time.**

⁵ *ABM* and *Frlekin* together stand for the proposition that the proposition that on-premises breaks are not labor code complaint.

1 week. *See* IWC Wage Order 4-2001, Section 1(A)(3)(d). Here, Plaintiff, the Class, and the other
2 Aggrieved Employees in management and team lead positions earned approximately \$49,000 per
3 year, falling short of the \$54,000 threshold needed to qualify for the professional exemption.
4 Therefore, Plaintiff, the Class, and the Aggrieved Employees are not exempt from meal period and
5 rest period requirements under the professional exemption of IWC Wage Order 4-2001.

6 30. Pursuant to section 2802(a) of the California Labor Code, “[a]n employer shall
7 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
8 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
9 directions of the employer....” Labor Code 2802(c) defines necessary to include all “reasonable”
10 expenses. The purpose of this statute is “to prevent employers from passing their operating
11 expenses on to their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562
12 (2007) (quoting legislative history from the 2000 amendment to the statute and holding that outside
13 salespersons are entitled to gas mileage reimbursement in addition to their commission pay).
14 Labor Code section 2804 also makes it crystal clear that claims under section 2802 are not
15 waivable.

16 31. Furthermore, under Labor Code section 2802, employers must reimburse
17 employees for reasonable work-related use of their personal cell phones – regardless of whether
18 or not aggrieved employees incurred any additional out-of-pocket expense from that work-related
19 use. *See, Cochran v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137 (Cal. Aug. 12, 2014)
20 (“We hold that when employees must use their personal cell phones for work-related calls, Labor
21 Code section 2802 requires the employer to reimburse them. Whether the employees have cell
22 phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable
23 percentage of their cell phone bills.”); see also *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17
24 (N.D.Cal. Aug. 27, 2014) (granting plaintiffs’ motion for partial summary judgment on the
25 plaintiffs’ cell phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL
26 6982943, at *21 (N.D.Cal. Dec. 9, 2014) (Hon. Edward Chen) (adopting the logic of *Cochran*)

27 32. The employer’s obligation to reimburse all reasonably-incurred business-related
28 expenses, including personal cell phone and laptop-related expenses for work-related usage, arises

1 when the employer “knew or should have known” that its employees incurred a business-related
2 expense. *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009) (Hon. Edward
3 Chen); *Wilson v. Kiewit Pacific Co.*, 2010 WL 5059522 (N.D. Cal. Dec. 6, 2010) (Hon. Susan
4 Illston) (adopting the “knew or should have known” standard). In such cases, including this one,
5 where employees have incurred reasonable work-related cell phone or laptop expenses that the
6 employer is or should have been aware of, an employer in California thus has an affirmative
7 obligation to reimburse expenses and cannot hide behind a policy advising employees to put in for
8 their expenses if they want to be reimbursed for them. *Id.*; see also Labor Code section 2804.

9 33. Here, Plaintiff, the Class, and the other aggrieved employees are and were
10 employees in making hard money loans to business owners in California. Defendant has no policy
11 or practice of affirmatively reimbursing employees for their out-of-pocket cell phone or laptop
12 expenses incurred for work-related purposes. Additionally, Defendant had no policy or practice of
13 affirmatively reimbursing employees for their home offices expenses, including among other
14 things home internet expenses, during the time Plaintiff, the Class, and the Aggrieved Employees
15 were required to work from home during the COVID-19 pandemic in 2020. Plaintiff, the Class,
16 and other employees used their personal cell phone and laptops and home offices for work without
17 any reimbursement in violation of Labor Code section 2802.

18 34. The administrative prerequisites of PAGA will be satisfied after 65 days have
19 elapsed from June 1, 2020 (i.e. 65 days since Plaintiff’s mailing of the PAGA notice with no further
20 communication from the LWDA to Plaintiff’s counsel). Plaintiff has paid the \$75.00 fee and has
21 otherwise satisfied the administrative prerequisites of PAGA, as amended.

22 35. Plaintiff by this action seeks to recover, on behalf of themselves and all other
23 current and former Aggrieved Employees of Defendant, the civil penalties provided by PAGA, as
24 specified in Labor Code § 2699(f). Plaintiff seeks to recover the PAGA civil penalties through a
25 representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior*
26 *Court*, 46 Cal. 4th 969 (2009). Class certification of the PAGA claims is not required.

27 **CLASS ACTION ALLEGATIONS**

28 36. Plaintiff brings this action, on behalf of herself and all others similarly situated, as

1 a class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class
2 composed of and defined as:

3 All individuals who or were employed by Select Funding LLC in the State of California
4 during the Class Period (hereinafter referred to as “Class Members” or the “Class”).

5 37. This action has been brought and may properly be maintained as a class action
6 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
7 litigation, the proposed class is easily ascertainable, and Plaintiff is a proper representative of the
8 Class:

9 a. Numerosity: The potential members of the Class as defined are so
10 numerous that joinder of all the members of the Class is impracticable. According to Defendant,
11 the total number of Class Members is estimated to be more than 100. The Class Members are
12 dispersed throughout California. Joinder of all members of the proposed classes is therefore not
13 practicable.

14 b. Commonality: There are questions of law and fact common to Plaintiff and
15 the Class that predominate over any questions affecting only individual members of the Class.
16 These common questions of law and fact include, without limitation:

17 i. Whether Defendant violated Sections 204 and 210 of the Labor Code by
18 failing to pay member of the Class all wages due on a timely basis;

19 ii. Whether Defendant failed to provide Plaintiff and the members of the Wage
20 Statement Class complete wage statements in violation of Labor Code Section 226(a);

21 iii. Whether Defendant violated Labor Code sections 226.7 and 512 and
22 Section 11 of IWC Wage Order No. 5 by failing to provide timely, duty-free meal periods to
23 Plaintiff and the members of the Class in California during the Class Period;

24 iv. Whether Defendant violated Labor Code section 226.7 by failing to provide
25 one hour of premium pay to each member of the Class for each day that a timely, duty-free meal
26 period was not provided in California during the Class Period;

27 v. Whether Defendant violated Labor Code sections 226.7 and Section 12 of
28 IWC Wage Order No. 5 by failing to provide compliant rest periods to Plaintiff and the members

1 of the Class in California during the Class Period;

2 vi. Whether Defendant violated Labor Code section 226.7 by failing to provide
3 one hour of premium pay to each member of the Class for each day that a compliant rest period was
4 not provided in California during the Class Period;

5 vii. Whether Defendant violated 2802 of the Labor Code and section 17203 of
6 the California Business and Professions Code during the Class Period by failing to reimburse
7 Plaintiff and the Class Members for their work-related expenses including personal cell phone and
8 laptop and home office expenses;

9 viii. Whether Defendant engaged in an unfair practice and violated section
10 17200 of the California Business and Professions Code by failing to provide Plaintiff and the
11 members of the Class with timely, duty-free meal breaks during the Class Period;

12 ix. Whether Defendant engaged in an unfair practice and violated section
13 17200 of the California Business and Professions Code by failing to provide Plaintiff and members
14 of the Class with meal period premiums for each day they were not provided a compliant meal
15 break;

16 x. Whether Defendant engaged in an unfair practice and violated section
17 17200 of the California Business and Professions Code by failing to provide Plaintiff and the
18 members of the Class with compliant breaks during the Class Period;

19 xi. Whether Defendant engaged in an unfair practice and violated section
20 17200 of the California Business and Professions Code by failing to provide Plaintiff and members
21 of the Class with rest period premiums for each day they were not provided a compliant rest break;

22 xii. Whether Defendant engaged in an unfair practice and violated section
23 17200 of the California Business and Professions Code by failing to reimburse Plaintiff and the
24 Class for their business-related expenses including phone and laptop expenses and home office
25 expenses during the Class Period;

26 xiii. Whether Plaintiff and the Class are entitled to restitution under Business
27 and Professions Code § 17200;

28 xiv. The proper formula(s) for calculating damages, interest, and restitution

1 owed to Plaintiff and the Class Members;

2 xv. The nature and extent of class-wide damages.

3 c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both
4 Plaintiff and Class Members sustained injuries and damages, and were deprived of property rightly
5 belonging to them, arising out of and caused by Defendant's common course of conduct in
6 violation of law as alleged herein, in similar ways and for the same types of unpaid wages.

7 d. Adequacy of Representation: Plaintiff is a member of the Class and will
8 fairly and adequately represent and protect the interests of the Class and Class Members.
9 Plaintiff's interests do not conflict with those of Class and Class Members. Counsel who represent
10 Plaintiff are competent and experienced in litigating large wage and hour class actions, including
11 numerous cases virtually identical to this one (i.e., wage and hour class action cases), and other
12 employment class actions, and will devote sufficient time and resources to the case and otherwise
13 adequately represent the Class and Class Members.

14 e. Superiority of Class Action: A class action is superior to other available
15 means for the fair and efficient adjudication of this controversy. Individual joinder of all Class
16 Members is not practicable, and questions of law and fact common to the Class predominate over
17 any questions affecting only individual members of the Class. Each Class Member has been
18 damaged or may be damaged in the future by reason of Defendant's unlawful policies and/or
19 practices. Certification of this case as a class action will allow those similarly situated persons to
20 litigate their claims in the manner that is most efficient and economical for the parties and the
21 judicial system. Certifying this case as a class action is superior because it allows for efficient and
22 full disgorgement of the ill-gotten gains Defendant has enjoyed by maintaining its unlawful break,
23 compensation, and non-reimbursement policies and will thereby effectuate California's strong
24 public policy of protecting employees from deprivation or offsetting of compensation earned in
25 their employment. If this action is not certified as a Class Action, it will be impossible as a practical
26 matter, for many or most Class Members to bring individual actions to recover monies unlawfully
27 withheld from their lawful compensation due from Defendant, due to the relatively small amounts
28 of such individual recoveries relative to the costs and burdens of litigation.

FIRST CAUSE OF ACTION
FAILURE TO PAY WAGES ON A TIMELY BASIS
[Cal. Labor Code §§ 204, 210]
On Behalf of Plaintiff and the Class Against Defendant

38. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraph.

39. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

40. At all times relevant hereto, whenever Plaintiff and other employees paid on a commission basis earned commissions, Defendant only paid them their commissions due once per month, in violation of Labor Code section 204. *See Amaral v. Cintas Corp.* No. 2, 163 Cal.App.4th 1157, 1209 (2008); *see also Peabody v. Time Warner Cable*, 59 Cal. 4th 662 (2014) (commissions must be paid twice every calendar month).

41. Labor Code § 210 provides that “in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty compensation policies and practices described in detail above, Plaintiff and the Class are entitled to recover penalties under Labor Code § 210.

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS
[Cal. Labor Code § 226(a)]
On behalf of Plaintiff and the Wage Statement Class Members Against Defendant

42. Plaintiff re-alleges and incorporates by reference each and every allegation set forth

1 in the preceding paragraphs.

2 43. Section 226(a) of the California Labor Code provides, in relevant part:

3 Every employer shall...furnish each of his or her employees...an accurate itemized
4 statement in writing showing (1) gross wages earned, (2) total hours worked by the
5 employee, except for any employee whose compensation is solely based on a salary and
6 who is exempt from payment of overtime under subdivision (a) of Section 515 or any
7 applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units
8 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
9 deductions, provided that all -deductions made on written orders of the employee may be
10 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
period for which the employee is paid, (7) the name of the employee and only the last four
digits of his or her social security number or an employee identification number other than
a social security number, (8) the name and address of the legal entity that is the employer
and (9) all applicable hourly rates in effect during the pay period and the corresponding
number of hours worked at each hourly rate by the employee...

11 44. Here, Defendant failed to provide Plaintiff and the Class with twice monthly wage
12 statements that included all commissions due, thus violating Labor Code § 226(a). Specifically,
13 the wage statements issued by Defendant to Plaintiff and the Class did not and do not include the
14 correct gross and net wages in violation of Labor Code § 226(a), since they did not include all
15 commissions earned on a twice monthly basis.

16 45. Labor Code § 226(e) provides that an employee is entitled to recover \$50 for initial
17 pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period,
18 not to exceed \$4,000, as well as an award of costs and reasonable attorney's fees, for all pay periods
19 in which the employer fails to provide accurate itemized statements to the employee causing the
20 employee to suffer injury.

21 **THIRD CAUSE OF ACTION**
22 **FAILURE TO PROVIDE TIMELY AND DUTY-FREE MEAL BREAKS AND PAY**
23 **MISSED MEAL BREAK PREMIUMS**
24 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order 4-2001 Section 11]**
25 **On behalf of Plaintiff and the Class Against Defendant**

26 46. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
27 in the preceding paragraphs.

28 47. California Labor Code § 226.7(a) provides, "No employer shall require any
employee to work during any meal or rest period mandated by an applicable order of the Industrial
Welfare Commission."

1 48. Labor Code § 512 requires employers to provide employees with a thirty (30)
2 minute uninterrupted and duty-free meal period within the first five (5) hours of an employee's
3 shift. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a
4 second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512,
5 an employer may not employ an employee for a work period of more than ten (10) hours, without
6 providing the employee with a second meal period of not less than thirty (30) minutes. The second
7 meal period may not be waived if the total hours worked is more than twelve (12) hours.

8 49. Under Labor Code § 512, if an employer maintains a uniform policy that does not
9 authorize and permit the amount of mealtime called for under the law (as specified in the applicable
10 Wage Order), "it has violated the wage order and is liable." The *Brinker* Court explained in the
11 context of rest breaks that employer liability attaches from adopting an unlawful policy:

12 An employer is required to authorize and permit the amount of rest break time called for
13 under the wage order for its industry. If it does not—if, for example, it adopts a uniform
14 policy authorizing and permitting only one rest break for employees working a seven-hour
15 shift when two are required—***it has violated the wage order and is liable.***
(*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

16 50. Following *Brinker*, the Courts of Appeal have confirmed that liability for meal
17 period violations arises when an employer adopts a uniform policy that fails to provide a duty-free
18 meal period as required by Labor Code section 512.⁶

19 51. Here, the Plaintiff and the other managers and team leads who are the Class for this
20 claim are not relieved of all duties during their meal periods several times per week because they
21 were required to remain on the premises for lunch. As a result, the meal periods taken by Plaintiff.
22 The Class, and the Aggrieved Employees are all on-duty.

23 52. "An on-duty meal period is permitted only when the nature of the work prevents an
24 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal

25 ⁶ For example, in *Faulkinbury*, the Court applied *Brinker*: "In *Faulkinbury I*, we concluded that even if [defendant]'s
26 on-duty meal break policy was unlawful, [defendant] would be liable only when it actually failed to provide a required
27 off-duty meal break. *Brinker* leads us now to conclude [defendant] would be liable upon a determination that
28 [defendant]'s uniform on-duty meal break policy was unlawful." *Faulkinbury*, 216 Cal.App.4th at p. 235.) The Court
went on: "the employer's liability arises by adopting a uniform policy that violates the wage and hour laws. Whether
or not the employee was able to take the required break goes to damages" (*Ibid.* [citations omitted]; see also
Benton v. Telecom Network Specialists, Inc. (2013) 220 Cal. App. 4th 701, 728.)

break.” *Lubin v. The Wackenhut Corp.* (2016) 5 Cal. App. 5th 926, 932.) The written agreement must include a provision allowing the employee to revoke it at any time. *Id.* Here, neither Plaintiff, the Class, nor the other aggrieved employees, were ever asked to sign an on-duty meal period agreement. But even if Plaintiff, the Class, and the Aggrieved Employees had been asked to sign on-duty meal period agreements, it is likely that such agreements would violate California law. Generally, the DLSE and courts have “found that the nature of the work exception applies: ‘(1) where the work has some particular external force that requires the employee to be on duty at all times, and (2) where the employee is the sole employee of a particular employer.’” *Id.* at p. 945; *Abdullah v. U.S. Security Associates, Ifenc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation to determine whether the nature of the work prevents an employee from being relieved *before* requiring an employee to take an on-duty meal period.” *Lubin*, 5 Cal. App. 5th at p. 946.) Nor may an employer “discharge its duty by arguing that its clients who requested on-duty meal periods determined that the nature of the work prevented officers from being relieved of all duty.” *Id.* at p. 947; *Benton*, 220 Cal. App. 4th at p. 729.)

53. Here, there is nothing in the job duties of Plaintiff, the Class, or the aggrieved employees that would require them to remain on-duty and on premises while taking a meal period. The California Supreme Court has made it clear that requiring an employee to remain on premises is inconsistent with requiring duty-free breaks. *See Augustus v. ABM Security Services, Inc.*, 2016 D.J. 12608 (2016)⁷; see also *Frlekin v. Apple Inc.*, No. S243805, 2020 WL 727813 (Cal. Feb. 13, 2020).⁸ Here, Plaintiff and the other leads or managers were required to remain on premises several times per week. This constitutes a failure to provide duty-free lunches and triggers meal period premiums and PAGA penalties.

54. As a result, for each day on which Plaintiff and other Class members were not provided a timely meal break, Plaintiff and the Class Members are entitled to recover one hour of

⁷ In *Augustus v. ABM*, the California Supreme Court declared that state law prohibits on-duty and on-call rest periods. It stated that **employers must (1) relieve their employees of all duties during rest periods and (2) relinquish any control over how employees spend their break time.**

⁸ *ABM* and *Frlekin* together stand for the proposition that the proposition that on-premises breaks are not labor code complaint.

1 premium pay pursuant to Labor Code section 226.7 and Section 11 of the IWC Wage Order.

2 **FOURTH CAUSE OF ACTION**
3 **FAILURE TO PROVIDE COMPLIANT REST BREAKS AND PAY REST BREAK**
4 **PREMIUMS**

5 **[Cal. Labor Code § 226.7; IWC Wage Order 4-2001 Section 12]**
6 **On behalf of Plaintiff and the Class Against Defendant**

7 55. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
8 in the preceding paragraph.

9 56. Labor Code § 226.7 provides “an employer shall not require an employee to work
10 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
11 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage
12 Order Nos. 7-2001 and 9-2001, an employer must authorize and permit all employees to take ten
13 (10) minute duty free rest periods for every major fraction of four hours worked. *See Augustus v.*
14 *ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that “during rest periods
15 employers must relieve employees of all duties and relinquish control over how employees spend
16 their time.”).

17 57. Pursuant to Labor Code § 226.7 and IWC Wage Order No. 4-2001, Defendant
18 failed to provide Plaintiff and all Class Members in management and team lead positions with
19 duty-free rest periods of not less than ten (10) minutes for every major fraction of four (4) hours
20 worked. Instead, Defendant regularly and consistently required Plaintiff and the other Class
21 Members to remain on the premises for rest breaks. This constitutes a failure to provide duty-free
22 rest periods and triggers rest period premiums and PAGA penalties.

23 58. As a result, for each day on which Plaintiff and other Class members were not
24 provided a compliant rest break, Plaintiff and the Class Members are entitled to recover one hour
25 of premium pay pursuant to Labor Code section 226.7 and Section 12 of the IWC Wage Order.

26 **FIFTH CAUSE OF ACTION**
27 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

28 **[Cal. Labor Code § 2802]**
On Behalf of Plaintiff and the Class Against Defendant

59. Plaintiff re-alleges and incorporates by reference each and every allegation set forth

1 in the preceding paragraph.

2 60. Pursuant to section 2802(a) of the California Labor Code, “[a]n employer shall
3 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
4 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
5 directions of the employer....” Labor Code 2802(c) defines necessary to include all “reasonable”
6 expenses. The purpose of this statute is “to prevent employers from passing their operating
7 expenses on to their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562
8 (2007) (quoting legislative history from the 2000 amendment to the statute and holding that outside
9 salespersons are entitled to gas mileage reimbursement in addition to their commission pay).
10 Labor Code section 2804 also makes it crystal clear that claims under section 2802 are not
11 waivable.

12 61. Furthermore, under Labor Code section 2802, employers must reimburse
13 employees for reasonable work-related use of their personal cell phones – regardless of whether
14 or not aggrieved employees incurred any additional out-of-pocket expense from that work-related
15 use. *See, Cochran v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137 (Cal. Aug. 12, 2014)
16 (“We hold that when employees must use their personal cell phones for work-related calls, Labor
17 Code section 2802 requires the employer to reimburse them. Whether the employees have cell
18 phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable
19 percentage of their cell phone bills.”); see also *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17
20 (N.D.Cal. Aug. 27, 2014) (granting plaintiffs’ motion for partial summary judgment on the
21 plaintiffs’ cell phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL
22 6982943, at *21 (N.D.Cal. Dec. 9, 2014) (Hon. Edward Chen) (adopting the logic of *Cochran*)

23 62. The employer’s obligation to reimburse all reasonably-incurred business-related
24 expenses, including personal cell phone and laptop-related expenses for work-related usage, arises
25 when the employer “knew or should have known” that its employees incurred a business-related
26 expense. *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009) (Hon. Edward
27 Chen); *Wilson v. Kiewit Pacific Co.*, 2010 WL 5059522 (N.D. Cal. Dec. 6, 2010) (Hon. Susan
28 Illston) (adopting the “knew or should have known” standard). In such cases, including this one,

1 where employees have incurred reasonable work-related cell phone or laptop expenses that the
2 employer is or should have been aware of, an employer in California thus has an affirmative
3 obligation to reimburse expenses and cannot hide behind a policy advising employees to put in for
4 their expenses if they want to be reimbursed for them. *Id.*; see also Labor Code section 2804.

5 63. Here, Plaintiff and the Class are and were employees in making hard money loans
6 to business owners in California. Defendant has no policy or practice of affirmatively reimbursing
7 employees for their out-of-pocket cell phone or laptop expenses incurred for work-related
8 purposes. Additionally, Defendant had no policy or practice of affirmatively reimbursing
9 employees for their home offices expenses, including among other things home internet expenses,
10 during the time Plaintiff and the Aggrieved Employees were required to work from home during
11 the COVID-19 pandemic in 2020. Plaintiff and the Class used their personal cell phone and laptops
12 and home offices for work without any reimbursement in violation of Labor Code section 2802.

13 64. Accordingly, Defendant violated Labor Code § 2802 and continues to do so by
14 failing to reimburse the Class Members for all work-related cell phone and laptop expenses they
15 incurred in connection with their job duties.

16 **SIXTH CAUSE OF ACTION**
17 **UNFAIR COMPETITION LAW VIOLATIONS**
18 **(BUS. & PROF. CODE § 17200, ET SEQ.)**
19 **On Behalf of Plaintiff and the Class Against Defendant**

20 65. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
21 in the preceding paragraphs.

22 66. Section 17200 of the California Business & Professions Code prohibits any
23 unlawful, unfair, or fraudulent business practices. Business & Professions Code § 17204 allows
24 “any person who has suffered injury in fact and has lost money or property” to prosecute a civil
25 action for violation of the UCL. Such a person may bring such an action on behalf of himself and
26 others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

27 67. Under section 17208 of the California Business and Professions Code, the statute
28 of limitations for a claim under Section 17200 is four years. Accordingly, the actionable period
for this cause of action is from October 8, 2016 through the present, and on-going until the

1 violations are corrected, or the Class is certified.

2 68. Section 90.5(a) of the Labor Code states that it is the public policy of California to
3 enforce vigorously minimum labor standards in order to ensure employees are not required to work
4 under substandard and unlawful conditions, and to protect employers who comply with the law
5 from those who attempt to gain competitive advantage at the expense of their workers by failing
6 to comply with minimum labor standards.

7 69. As a direct and proximate result of Defendant's unlawful business practices,
8 Plaintiff and the Class Members have suffered economic injuries. Defendant has profited from its
9 unlawful, unfair, and/or fraudulent acts and practices.

10 70. Plaintiff and similarly situated Class Members are entitled to monetary relief
11 pursuant to Business & Professions Code §§ 17203 and 17208 for unpaid meal and rest period
12 premiums and unreimbursed business expenses due and interest thereon, from at least four years
13 prior to the filing of this complaint through to the date of such restitution, at rates specified by law.
14 Defendant should be required to disgorge all the profits and gains it has reaped and restore such
15 profits and gains to Plaintiff and Class Members, from whom they were unlawfully taken.

16 71. Through its actions alleged herein, Defendant has engaged in unfair competition
17 within the meaning of section 17200 of the California Business & Professions Code, because
18 Defendant's conduct, as herein alleged has damaged Plaintiff and the Class Members by
19 wrongfully denying them reimbursement for business expenses, and wrongfully denying them
20 meal and rest period premiums, and therefore was substantially injurious to Plaintiff and the Class
21 Members.

22 72. Defendant engaged in unfair competition in violation of sections 17200 et seq. of
23 the California Business & Professions Code by violating Sections 226.7 and 512 of the California
24 Labor Code, and Sections 11 and 12 of the IWC Wage Order 4-2001.

25 73. Defendant's course of conduct, act and practice in violation of the California laws
26 mentioned above constitute independent violations of sections 17200 et seq. of the California
27 Business and Professions Code.

28 74. Plaintiff and similarly situated Class Members are entitled to enforce all applicable

1 penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

2 75. Plaintiff has assumed the responsibility of enforcement of the laws and public
3 policies specified herein by suing on behalf of themselves and other similarly situated Class
4 Members previously or presently employed by Defendant in California. Plaintiff's success in this
5 action will enforce important rights affecting the public interest. Plaintiff will incur a financial
6 burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys'
7 fees to Plaintiff is appropriate pursuant to Code of Civil Procedure §1021.5, and Labor Code §
8 2802.

9
10 **SEVENTH CAUSE OF ACTION**
11 **LABOR CODE PRIVATE ATTORNEY GENERAL ACT**
12 **PAGA PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 204, 210, 226, 226.3,**
13 **226.7, 512, AND 2802**
14 **(Labor Code §§ 2698-2699.5)**
15 **On Behalf of Plaintiff and the Aggrieved Employees Against Defendant**

16 76. Plaintiff, on behalf of herself and all aggrieved employees, realleges and
17 incorporates by reference all previous paragraphs.

18 77. Based on the above allegations incorporated by reference, Defendant violated
19 Labor Code §§ 204, 210, 226(a), 226.3, 226.7, 512, and 2802, as well as IWC Wage Order 4-2001.

20 78. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and
21 all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial
22 subject to the following formula:

23 \$100 for the initial violation per employee per pay period; and

24 \$200 for each subsequent violation per employee per pay period.

25 These penalties will be allocated 75% to the Labor Workforce Development Agency and
26 25% to the affected employees.

27 79. In addition, as set forth above, Defendant failed to provide Plaintiff and all
28 aggrieved employees with accurate itemized wage statements in compliance with Labor Code §
226(a). Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section
226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for

each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.”

80. Further, Plaintiff, as an Aggrieved Employee, need not demonstrate or prove that Defendant’s conduct in refusing to provide accurate and itemized wage statements was knowing, intentional, or willful. *Lopez v. Friant & Assocs., LLC*, cited above; *see also Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, “all [plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed above.”); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that “for the purposes of recovering PAGA penalties, one need only prove a violation of Section 226(a), and need not establish a Section 226(e) injury.”); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiff do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.”).

81. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2699, et seq. because of Defendant’s violation of Labor Code §§ Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 512, and 2802, as well as IWC Wage Order 4-2001.

JURY DEMAND

82. Plaintiff hereby demands trial by jury of her and the Class’s claims against Defendant, and of all claims except for the PAGA claims which are subject to a bench trial.

PRAYER FOR RELIEF

Wherefore, Plaintiff, on behalf of herself and the members of the Class, pray for judgment against Defendant as follows:

1. An Order than this action may proceed and be maintained as a class action;
2. On the First Cause of Action:
 - a. A declaratory judgment that Defendant violated California Labor Code §§ 204 and 210;
 - b. Pursuant to Labor Code §§ 204 and 210, an award to Plaintiff and the Class for penalties pursuant to Labor Code § 210.

///

1 3. On the Second Cause of Action:

2 a. A declaratory judgment that Defendant violated California Labor Code
3 §226 by issuing inaccurate and/or incomplete wage statements to Plaintiff and the wage statement
4 Class Members;

5 b. An award to Plaintiff and Class Members of \$50 for each initial pay period,
6 one year prior to the filing of this Complaint through the date of trial, in which a violation of
7 Section 226 occurred and \$100 for each subsequent pay period, one year prior to the filing of this
8 Complaint through the date of trial, in which a violation of Section 226 occurred, not to exceed
9 \$4,000 for each member of the Class, as well as an award of costs and reasonable attorney's fees,
10 pursuant to Labor Code § 226(e).

11 4. On the Third Cause of Action:

12 a. A declaratory judgment that Defendant violated California Labor Code §§
13 226.7, 512 and Section 11 of IWC Wage Order 4-2001;

14 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Class
15 Members for an hour of pay for each day that a timely, duty-free meal period was not provided
16 during the Class Period.

17 5. On the Fourth Cause of Action:

18 a. A declaratory judgment that Defendant violated California Labor Code §
19 226.7 and Section 12 of IWC Wage Order 4-2001;

20 b. Pursuant to Labor Code § 226.7, an award to Plaintiff and the Class
21 Members for an hour of pay for each day that a compliant rest period was not provided during the
22 Class Period.

23 6. On the Fifth Cause of Action:

24 a. A declaratory judgement that Defendant violated Labor Code § 2802;

25 a. Pursuant to 2802 (a)-(c), reimbursement for all the unreimbursed business-
26 related expenses including cell phones and laptop expenses, plus interest and attorney's fees.

27 7. On the Sixth Cause of Action:

28 a. That the Court find and declare that Defendant have violated the UCL and

1 committed unfair and unlawful business practices by failing to pay meal break premiums, and by
2 failing to reimburse Plaintiff and the Class for all their personal cell phone and laptop expenses;

3 b. Restitution, including, but not limited to, the relief permitted by sections
4 226.7, and 2802 of the California Labor Code (i.e., pay as specified for meal and rest period
5 premiums and reimbursement of all business-related expenses by Plaintiff and the members of the
6 Class during the Class Period.

7 8. On the Seventh Cause of Action:

8 a. A civil penalty against Defendant in the amount of \$100 for the initial
9 violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the California
10 Labor Code for Plaintiff and the Aggrieved Employees during all of the pay periods in the PAGA
11 Period and on-going until the violations are corrected, or this subclass is certified;

12 b. An award of reasonable attorney's fees against Defendant as specified in
13 Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection
14 with the PAGA claims;

15 c. An award of all costs incurred by the undersigned counsel for Plaintiff in
16 connection with Plaintiff's and Aggrieved Employees' PAGA claim against Defendant, as
17 provided for in Labor Code § 2699(g)(1).

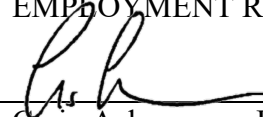
18 9. All other relief as this Court deems proper.

19
20 Dated: January 28, 2021

Respectfully,

21 ACKERMANN & TILAJEF, P.C.
22 EMPLOYMENT RIGHTS LAW GROUP, APC

23 By:


Craig Ackermann, Esq.

Amir Seyedfarshi, Esq.

*Counsel for Plaintiff, the Class, and the
Aggrieved Employees*